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In the
Supreme Court of the United States

OCTOBER TERM, 1961

No. 802

SAN JUAN DARLINGTON, INC.,
PETITIONER IN CERTIORARI,

v.

DOLORES SANTAELLA NEGRON
AND PHILIP LICARI,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

San Juan Darlington, Inc., a South Carolina corporation, respectfully files this its petition for writ of certiorari to the Supreme Court of the Commonwealth of Puerto Rico

for the purpose of having reviewed, corrected and reversed a decision of that Court entered on the 22nd day of November, 1961, in the case of Dolores Santaella Negron, Plaintiff-Appellee; vs. Philip Licari and San Juan Darlington, Inc., Defendants-Appellees and Appellant, the latter, No. 12,367 in said Court.

I.
Opinion and Judgment Below

The opinion and judgment of the Supreme Court of the Commonwealth of Puerto Rico sought to be reviewed, affirmed a judgment entered against petitioner in certiorari in favor of Dolores Santaella Negron by the Superior Court of San Juan, Puerto Rico. The opinion and judgment has not been officially reported. A copy is appended hereto. (Exhibit "A").

II.
Grounds On Which Jurisdiction Invoked

The decision and judgment of the Supreme Court of the Commonwealth of Puerto Rico sought to be reviewed was rendered adversely to petitioner in certiorari without due process of law and deprived petitioner in certiorari of due process of law in violation of the Fifth Amendment to the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States, and Section 7 of Article II of the Constitution of the Commonwealth of Puerto Rico,[1] and denied petitioner in certiorari equal protection of the laws in violation of said Fourteenth

[1] Adopted pursuant to an Act of the Congress of the United States —Public Law 600 of the 81st Congress, 64 Stat. 314, and subsequently approved and made effective by a Joint Resolution of the Congress of the United States—Public Law 447 of the 82nd Congress.

Amendment and said Section and Articles of the Constitution of the Commonwealth of Puerto Rico, because:

1. At the time petitioner in certiorari filed its appeal in the Supreme Court of the Commonwealth of Puerto Rico, it became entitled *as a matter of right* under the rules of that Court, which were then, and had been since 1946, in force and effect, to have its appeal presented by oral argument of its counsel and to have its appeal decided by not less than four Justices, at least some of whom had heard and who had had the benefit of such oral argument.[2]

Petitioner in certiorari availed itself of the rights accorded it by the then rules of the Court and its appeal was presented by oral argument of its counsel on March 28th, 1960 "before the full court" (the Chief Justice and one Associate Justice, not participating). However, the Court subsequently adopted new rules, which became effective July 1st, 1961, and the decision and judgment on petitioner in certiorari's appeal was rendered November 22nd, 1961 by a Division of the Court composed of only *three* justices, *none of whom had heard nor had had the benefit of the oral argument*, each having been appointed a justice of the Court subsequent to the date the case was argued and submitted.

The decision and judgment was thus rendered contrary

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[2] Rules of the Supreme Court of Puerto Rico, approved March 15th, 1946, Title 4, Laws of Puerto Rico Annotated, App. I.

Rule 1, provided: "Four members of the Supreme Court shall constitute a quorum for a session of the full Court."

Rule 44(c) provided, in part: "If either party requests it, the Court will hear oral argument."

Rule 19 provided: "Every hearing shall be held before one division except when the Court, because of the nature of the case or for reasons of public interest, shall order that it be held before the whole Court. All of the judges of the Court, including those who were not present at the hearing, shall participate in the consideration and decision of the cases heard before one division, except, if for some other reason, one of them decides not to take part. When the decision in said case does not represent the unanimous vote of the judges who participated, the case shall be set for hearing before the full Court."

to the rules of the Court, without due process of law, and denied petitioner in certiorari equal protection of the laws of Puerto Rico, in that, until July 1st, 1961, the date the rules were changed, appeals of other litigants who had, as petitioner in certiorari had, availed themselves of Rule 11(e), were decided by not less than four justices, at least some of whom had heard and had had the benefit of the oral argument of their counsel.

2. Although one of the contentions of petitioner in certiorari was that no injury would have resulted from the sudden opening of the door by Licari had Dolores Santaella Negron exercised ordinary care in traversing the corridor of petitioner in certiorari's building, and although the evidence showed, and the trial court found as a fact that the 13-1/2 foot wide corridor was lighted by electricity during the whole day,[3] and that Dolores Santaella Negron was well acquainted with the corridor,[4] the Supreme Court refused to pass on and determine that issue and petitioner in certiorari was thus deprived of the benefit of a defense it had under the laws of Puerto Rico.

Petitioner in certiorari contends that it was the duty of the Supreme Court of the Commonwealth of Puerto Rico to pass on and determine the question of whether or not Dolores Santaella Negron could have avoided injury by the exercise of ordinary care, that had it done so, the Court would have of necessity reversed the judgment of the trial court.

III.

Dates of Judgment and Order on Motion for Rehearing

The judgment sought to be reviewed was rendered on *November 22nd, 1961*. Petitioner in certiorari's motion for

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[3] Findings of Fact, Record, p. 16.

[4] Ib., Record, p. 11.

rehearing was overruled and denied on *December 22nd, 1961*. A copy of the order entered on the motion for rehearing is appended hereto (Exhibit "B").

IV.
Statutory Provisions Conferring Jurisdiction

The Statutory provisions conferring jurisdiction on this Court to review the decision and judgment in question is 75 Stat. 417, Section 1257 (3) of Title 28 of United States Code Annotated, which reads as follows:

"Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows: (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question, or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of or commissions held or authority exercised under, the United States."

V.
Questions Presented for Review

1. Did Rules 4 and 19 of the rules adopted by the Supreme Court of Puerto Rico in 1946, and which were in force and effect when the appeal in the case at bar was filed, argued and submitted, give to petitioner the right to have its appeal decided by, in any event, not less than four justices of the Court? If so, could petitioner in certiorari be constitu-

tionally deprived of that right by the subsequent adoption by the Court of rules authorizing a decision of the appeal by a Division of the Court composed of only three justices?

2. Did Rules 11(c) and 19 of the rules adopted by the Supreme Court of Puerto Rico in 1946, and which were of force and effect when the appeal in the case bar was filed, argued and submitted, give to petitioner in certiorari, which had availed itself of the benefits of Rule 11(c), the right to have its appeal decided by at least some of the justices before whom the oral argument of its counsel had been presented? If so, could petitioner in certiorari be constitutionally deprived of that right by the subsequent adoption by the Court of rules authorizing a decision of the appeal by justices who had not had the benefit of the oral argument?

3. Did the decision and judgment sought to be reviewed, which was decided by a Division of the Court composed of only three justices, deprive petitioner in certiorari of equal protection of the laws of Puerto Rico, in that from 1946 until the rules of the Supreme Court of Puerto Rico were changed in July, 1961, subsequent to the time the appeal in the case at bar was filed, argued and submitted, all appeals were decided by at least four justices of the Court?

4. Did the decision and judgment sought to be reviewed deprive petitioner in certiorari of equal protection of the laws of Puerto Rico, in that from 1946 until the rules of the Supreme Court of Puerto Rico were changed in July, 1961, subsequent to the time the appeal in the case at bar was filed, argued and submitted, appeals in which litigants had, as petitioner in certiorari had, elected to avail themselves of the benefit of Rule 11(c), were decided by at least some of the justices before whom the oral arguments had been presented?

5. Did the Supreme Court of the Commonwealth of

Puerto Rico deny petitioner in certiorari due process of law by depriving it of the benefits of a defense it had under the laws of Puerto Rico, in refusing to pass on and determine the issue presented by the pleadings and the evidence in the case that had Dolores Santaella Negron exercised ordinary care in traversing the corridor of the building, she would have avoided being injured by the sudden opening of the door into the corridor, despite the fact the evidence showed, and the trial court found as a fact that the 13-1 2 foot corridor was lighted and that Dolores Santaella Negron was well acquainted with the corridor from having used it on numerous occasions?

6. Does the decision and judgment sought to be reviewed so far depart from settled and firmly established principles of law and does it so conflict with prior decisions of the Supreme Court of Puerto Rico as to have the effect of denying petitioner in certiorari due process of law and of depriving it of equal protection of the laws?

VI.
Constitutional Provisions, Etc., Invoked

1. The Fifth Amendment of the Constitution of the United States, which provides that no person shall be "*deprived of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.*"

2. Section 1, of the Fourteenth Amendment of the Constitution of the United States, which provides that no State shall "deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

3. Section 7, Article II, of the Constitution of the Commonwealth of Puerto Rico, adopted pursuant to Public Law

600 of the 80th Congress of the United States of America (64 Stat. 314), which provides, in part, as follows: "*No person shall be deprived of his liberty or property without due process of law and no person shall be denied equal protection of the laws.*"

4. Section 3, Article V, of the Constitution of the Commonwealth of Puerto Rico, which provides: "*The Supreme Court shall be the court of last resort in Puerto Rico and shall be composed of a Chief Justice and four Associate Justices. The number of Justices may be changed only by, upon request of the Supreme Court.*"

5. Act No. 2, approved by the Legislature of Puerto Rico on August 4th, 1952, Title 4, Laws of Puerto Rico Annotated, Section 32, which provides: "*The Supreme Court of Puerto Rico shall be composed of a Chief Justice and six Associate Justices.*"

6. Section 295 of the Civil Code of Procedure which provides, in part: "An appeal may be taken to the Supreme Court of Puerto Rico from the Superior Court, (1) *from a final judgment in an action or special proceeding commenced in the court in which the same was rendered, within one month after entry of the judgment* -(3) *from an order granting or refusing a new trial—within ten days after the order—is made and entered on the minutes of the court or filed with the secretary.*"

7. Rule 4 of the Rules of the Supreme Court of Puerto Rico, approved March 15th, 1946, Title 4, Laws of Puerto Rico, App. 1, which provided as follows: "*Four members of the Supreme Court shall constitute a quorum for a session of the full Court.*"

8. Rule 11(e) of the Rules of the Supreme Court of Puerto Rico, approved March 15th, 1946, Title 4, Laws of Puerto Rico, App. 1, which provided as follows: "*Within five days after the filing of appellee's brief, the attorneys*

for both parties shall by stipulation or by separate statements indicate whether or not they intend to make oral argument, it being understood, however, that if either party requests it, the Court will hear oral argument. If said stipulation or statement is not filed within said term, the case shall be considered as submitted on the briefs already filed."

9. Rule 19 of the Rules of the Supreme Court of the Commonwealth of Puerto Rico, approved March 15th, 1946, Title 4, Laws of Puerto Rico, App. I, which provided as follows:

"Every hearing shall be held before one division except when the Court shall order it to be held before the full Court. All of the judges of the Court, including those who were not present at the hearing, shall participate in the consideration and decision of the cases heard before one division, except, if for some other reason, one of them decides not to take part. When the decision in said cases does not represent the unanimous vote of the Judges who participated, the case shall be set for hearing before the full Court."

VII.

Statement of the Case

Dolores Santaella Negron brought suit in the Superior Court of San Juan, Puerto Rico, against petitioner in certiorari, a South Carolina corporation, and one Philip Licari, a resident of Puerto Rico, to recover damages for injuries suffered by her as the result of being struck and knocked down by a door opened "negligently and suddenly" by Licari into the main corridor of a building in San Juan known as the San Juan Darlington. Record, p. 1.

Petitioner in certiorari denied that it was guilty of any negligence and expressly plead that Dolores Santaella Ne-

gron's injuries were due to her own negligence and/or the negligence of Philip Licari. Record, p. 6.

The San Juan Darlington is a multi-story apartment building owned by petitioner in certiorari. Philip Licari, a practicing lawyer, was a tenant occupying an office on the first, or main floor of the building. The door to his office opened outwardly into a 13-1/2 wide corridor leading from the street entrance of the building to the lobby and apartment elevators. Record, p. 16.

The door to Licari's office was approximately 36 inches in width. It had a mechanical device which caused the door to close automatically, making it necessary to use some force in opening the door and making it impossible to open the door its full width with a single push. Record, p. 8.

The building was constructed in accordance with the provisions of the United States Housing Authority Regulations and the National Building Code which required all of the doors on the first floor to open outwardly into the main corridor. The plans were approved by both the Planning Board and Permit Bureau of Puerto Rico and the Insular Fire Service, which at the time followed the provisions of the National Building Code. Record, p. 17.

On the date she was injured, Dolores Santaella Negron had visited a beauty parlor located on the main floor of the building. For three years prior to that date she had been visiting the beauty parlor situated in said building, three of four times a year, (and) in order to reach the beauty parlor from the front entrance of the building and go out to the street again, it was necessary to walk all along "the main corridor." Record, p. 11.

The corridor was lighted by electricity during the whole day. Record, p. 16.

The Court found that Licari was not guilty of negligence in opening the door, but that petitioner was guilty of negli-

gence in permitting the door to open outwardly into the corridor, and entered judgment against petitioner in certiorari, in the amount of $14,951.66. Record, pp. 23-24.

Petitioner in certiorari entered an appeal to the Supreme Court of Puerto Rico on May 27th, 1957, and requested the Court to hear oral argument pursuant to Rule 11 (e) of the Court, then in effect. Record, p. 25.

Said Rule 11(e) of the Rules of the Supreme Court of Puerto Rico, approved March 15th, 1946, Title 4, Laws of Puerto Rico Annotated, App. 1, provided, in part, "*that if either party requests it, the Court will hear oral argument.*"[5].

The case was called and heard on oral argument of counsel "before the full court" (the Chief Justice and one Associate Justice not participating) on March 28th, 1960. Record, p. 29.

Petitioner for certiorari in its brief filed in the Supreme Court of the Commonwealth of Puerto Rico expressly assigns the judgment of the Superior Court of San Juan, Puerto Rico as error on the ground "the trial court erred in sentencing the landlord San Juan Darlington, Inc., without evidence, denying its equal protection of the law and illegally depriving it of its property; and also erred in making subjective findings, thus depriving this appellant of its right to cross-examine and of due process of law." Appendix "C".

At the time the appeal was filed and at the time it was argued, the following pertinent Acts of the Legislature of Puerto Rico were in force and effect:

Act No. 2, approved August 4th, 1952, Section 1, Title 4, Laws of Puerto Rico Annotated, Section 32 of which provided: "*The Supreme Court of Puerto Rico shall be composed of a Chief Justice and six Associate Justices.*"

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[5] Full text set out in Subdivision VI, above.

Rule 4 of the Rules of the Supreme Court of Puerto Rico, approved March 15th, 1946, Title 4, Laws of Puerto Rico Annotated, App. 1, which provided as follows: "*Four members of the Supreme Court shall constitute a quorum for a session of the full Court.*"

Rule 11(c) quoted above, providing for oral argument upon request.

Rule 19 of the Rules of the Supreme Court of Puerto Rico, approved March 15th, 1946, Title 4, Laws of Puerto Rico Annotated, App. 1, which provides that "all of the Judges of the Court, including those who were not present at the hearing (of the arguments), shall participate in the consideration and decision of the cases heard by one division (of the Court)"[6]

Although request for oral argument had been made pursuant to Rule 11(c) of the Court, and the case had been argued orally "before the full Court" on March 28th, 1960, the decision sought to be reviewed was rendered on November 22nd, 1961 by a Division of the Court composed of only three justices, none of whom had heard the oral arguments in the case, each having been appointed justices of the Court subsequent to the date the case was argued.[7] Record, p. 30.

Petitioner in certiorari filed a motion for rehearing on December 4th, 1961, Record, p. 51, with supporting brief, in which it expressly called attention to the fact the decision and judgment now sought to be reviewed had been rendered by a Division of the Court composed of only three justices, none of whom had been members of the Court at the time

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[6] Words in parenthesis supplied. Full text set out in Subdivision VI, above.

[7] Mr. Justice Blanco Lugo, sworn in on February 3rd, 1961, and Mr. Justices Carlos V. Davillo and Marcos A. Rigan, sworn in on June 1st, 1961.

the case was argued orally by its counsel, and made the point that he had been deprived of the rights accorded it by the rules of the Court in effect at the time the appeal was entered and at the time the appeal was submitted to the Court for consideration.

Petitioner in certiorari also made the point that the Court had failed to pass on and determine the issue of whether or not Dolores Santaella Negron would have avoided injury had she been in the exercise of ordinary care, and had "*merely assumed*" that she had exercised ordinary care. Record, p. 52.

The motion for rehearing was denied on December 22nd, 1961, and this petition for writ of certiorari is filed within *ninety* days from that date.

VIII.
Conclusion

The reasons the writ prayed for should be granted are so clearly demonstrated by the facts themselves, petitioner in certiorari feels that any amplifying argument would be largely redundant. There can be no question but that petitioner in certiorari has been denied the right acquired by it under the rules of the Supreme Court of the Commonwealth of Puerto Rico to have its appeal decided by at least some of the justices who had the benefit of its counsel's oral argument—a right enjoyed by all litigants similarly situated whose appeals were decided prior to the date the rules of the Court were changed in July, 1961. And, petitioner believes, it is equally clear that it was denied due process of law when the Court below refused to consider its defense, expressly made and presented, that respondent Dolores Santaella Negron would not have been injured had she exercised ordinary care in traversing the corridor of peti-

tioner in certiorari's building, with which she was well acquainted.

Respectfully submitted,

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Appendix "A"

IN THE SUPREME COURT OF PUERTO RICO

Civil No. 12;367

DOLORES SANTAELLA NEGRON,
PLAINTIFF-APPELLEE AND
APPELLANT,
v.
PHILIP LICARI AND SAN JUAN DARLINGTON, INC.,
DEFENDANTS-APPELLEES AND
APPELLANT THE LATTER.

APPEAL FROM THE SUPERIOR COURT, SAN JUAN PART

DAMAGES

Division composed by its President, Mr. Justice Blanco-Lugo and Mr. Justice Rigau and Mr. Justice Davila

Opinion of the Division delivered by Mr. Justice Rigau

San Juan, Puerto Rico, November 22, 1961

This is an action for damages for personal injuries. The defendant San Juan Darlington, Inc. is the owner of and operates a twelve-story building known as "San Juan Darlington" at 600 Fernandez Juncos Avenue, Santurce, Puerto Rico. The first floor of said building is devoted to offices and commercial establishments and the remaining eleven stories are devoted to the rental of residential apartments. The defendant Philip Licari is an attorney at law and at the time of the events herein he had his office in the first floor of the San Juan Darlington, which office he occupied as tenant of the codefendant. The aforesaid building has a corridor along the center of its first floor with access to several offices and businesses which are established on either side of said corridor.

On the day of the accident the plaintiff and her sister left a beauty parlor of which they are clients situated on the first floor of the Darlington Building and walked along said corridor towards the street. As they thus walked, the defendant Licari suddenly opened the door of his office hitting the plaintiff on her right side, throwing her to the floor. Said door opens outward, that is, towards the corridor and it is 36 inches wide. It was opened by Mr. Licari while he was inside his office.

According to the findings of fact of the trial, the accident took place on July 22, 1955; that day the victim was examined by a physician at her house; on the 23d she was examined by a bone specialist who was called to her house; the same day X-Ray pictures were taken at patient's house; on July 24 she was taken to a hospital and was operated next day. Plaintiff returned on next Augustt 9 to her home in an ambulance, and stayed in bed for more than two months. In October, the physician gave orders that she be taken out of bed because she was suffering from pneumonia and she spent half an hour every day in a wheel chair. At the time of the trial, on November 8, 1956, she had been able to sit only on a wheel chair; she could not walk, not even on crutches. Prior to the accident the plaintiff enjoyed good health and walked without any aid. At the time of the accident the plaintiff was 74 years of age and weighed 140 pounds.

The injuries suffered by the plaintiff are described by the trial court in its opinion as follows:

> "The medical examination made by Dr. Espinosa on the day following the fall revealed the existence of trauma in both shoulders and arms and trauma with fracture in the left hip. The trauma on the right side was an ecchymosis in the lateral part of the right arm from the shoulder to the arm. There was an ecchymosis on the left shoulder which also extended to the arm.

There was an extravasation of the blood in the conjunctive of the left eye and there was a dislocation of the hip which required an operation. In the operation the hip was opened to reduce the fracture with internal fixation by a nail. The subcapital fracture was immediately under the head of the femur with dislocation of the bone. After the operation a cast was placed from the ankle covering the foot in order to prevent any outward movement of the leg. When she left the Auxilio Mutuo, plaintiff remained in her home in a hospital bed until she was able to sit in a wheel chair. According to the last X-Ray which was made about two weeks before the trial, the doctor authorized the plaintiff to stand on her feet but holding for support on two bars which were constructed for that purpose. The last medical examination of the patient revealed: (1) disuse atrophy of the limb due to the fracture; (2) weakness of the limb caused by disuse; (3) inflammation of the left knee with considerable limitation of the movement of the knee, a limitation of 65 flexion, the normal being 90 ; (4) certain secondary limitation in the movement of the other leg, the right leg. This condition affects the patient psychologically and morally due to her inability and incapacity to attend herself as well as the physiological functions in general. The more recent X-Rays show that the fracture was healed.

"Dr. Espinosa testified on the witness stand that at that time the prognostic was of a reserved nature, that is, the plaintiff's condition could develop eventually satisfactorily, that the inflammation of her left knee could give her much trouble perhaps indefinitely; or also that necrosis of the head of the bone could follow, that is, could die and become deformed. This would cause great pain when standing and it would affect the

circulatory system making it necessary perhaps to remove, by surgery, the head of the bone."

The plaintiff claimed $50,000.00 for damages, plus medical expenses incurred and costs and attorney's fees. The Superior Court dismissed the complaint as to defendant Licari, and granted it as to the San Juan Darlington, Inc. ordering it to pay $12,000.00 for damages, $2,451.06 for medical expenses plus costs and $500.00 for attorney's fees.

The appellant alleges that the trial court erred (1) in considering the evidence sufficient and in deciding that the landlord was negligent and in failing to decide that the plaintiff as well as codefendant Philip Licari has been negligent; (2) in sentencing the landlord without evidence and in "making subjectives findings thereby depriving the appellant of its right to examine and of the due process of law"; and (3) in ordering it to pay a disproportionate compensation without any legal basis and in imposing attorney's fees.

We shall discuss the first and second assignments of error jointly because they are closely related. In support of its position the defendant raises the following three questions in its brief, which we shall consider: (a) That the tenant Licari and not the landlord, is liable for the damages suffered by plaintiff because Licari and not the landlord had the control of his office and of the door of said office; (b) That the landlord was compelled to have that door opening outward and not inward, because it was so required by the Regulations of the Planning Board of Puerto Rico, the Fire Service Regulations, the "National Building Code" and because the drawings of the building were approved by the Bureau of Permits of Puerto Rico; (c) That the evidence does not have the scope or legal consequences of rendering the defendant liable for the damages.

Liability of the landlord. It is a well-settled principle.

consistently followed by the authorities, that when a building consists of several apartments or rooms and they are leased to different tenants, the entrances, foyers, staircases and halls of common use are, except when otherwise provided, in the possession and under the control of the landlord and, consequently, the responsibility for their condition and safety rests on the latter. It is his duty to see that said facilities of common use are kept in such conditions as to offer security to the tenants as well as to the persons who legitimately enter the building. Among the persons so entering the building legitimately are the clients of the businesses established therein. *Ramirez* v. *Hotel Condado*, 68 P.R.R. 880, 882 (1948); *Torres* v. *Fernandez*, 56 P.R.R. 459, 470 (1940); *Nunan* v. *Dudley*, 91 N.E. 2d 840 (1950); *Wood* v. *Larner*, 26 A. 2d 89, 92 (1942); *Pickford* v. *Abramson*, 152 A. 317, 318 (1930); *United Shoe Machinery Corp.* v. *Paine*, 26 F.2d 591 (1928); 26 ALR 2d 476; 25 ALR 2d 446; 97 ALR 221; 25 ALR 1273; 2 *Restatement of the Law of Torts*, sec. 360, p. 976; *Prosser on Torts*, 2d ed., sec. 80, p. 471; Harper & James, *The Law of Torts*, Vol. 2, sec. 27.17, p. 1516.

Therefore, we cannot flatly discard the possibility that the landlord might carry liability. The victum was injured by a part or accessory of the building which struck her while she was walking along the main corridor of common use; she was not in the office of tenant Licari, not even entering or leaving said office. The plaintiff was legitimately using said corridor, for she was coming out of one of the businesses established in that floor of the building (the beauty parlor) and walked towards the street where she intended to take a taxi.

The Regulgtiovs. Let us now consider defendant's contention to the effect that it was compelled to have that door opening outward because it was so required by the government regulations. Defendant cites the Building Code, which

is Regulation No. 7 of the Planning Board of Puerto Rico and it makes reference to sections 113(b) and 125 of said Regulations. 23 R. & R. P. R., secs. 42-1 *et seq.*

In the first place, it appears from the evidence that when the drawings of the San Juan Darlington were approved, said Building Regulation had not yet come into existence. The drawings of that building were approved by the Bureau of Permits on August 4, 1950. The Building Regulation of Puerto Rico was adopted by the Planning Board four years later, on August 11, 1954, and approved by the Governor on August 13 of the same year. 23 R. & R. P.R., sec. 43-1 note. At the time the drawings of the building were approved, Puerto Rico did not have a building code, as testified by Mr. Hector Deliz, the expert called by the defendant, who had been Permit Official precisely when those drawings were approved. It is clear, therefore, that since the Building Regulation did not exist in 1950, said regulation could not have required anything in connection with the drawings in question.

In the second place, let us see whether the sections cited by the defendant from the aforesaid Regulations, in force at present, have the scope attributed to them. Section 113 is entitled "Exit Facilities in Places of Assembly". The regulation defines "places of assembly" as follows:

> "Places of assembly means rooms or spaces *in which provision is made for the seating of one hundred or more persons* for religious, recreational, educational, political, social, or amusement purposes or for consumption of food or drink. Such room or space shall include any occupied connecting room or space in the same story, or in a story or stories above or below, where entrance is common to the rooms or spaces". (Italics supplied.) *23 R. & R. P.R., sec. 43-21.*

Subdivision (b) of Section 113, cited by the defendant, provides, insofar as pertinent, that "In places of assembly,

exits shall be provided at the rear of the auditorium, leading into the foyer or into a passageway to the street. These exits shall be not less in width than the full width of the aisle or aisles leading thereto". *31 R. & R. P.R., sec. 43-823(b.)*

From an examination of the Building Regulations it appears that said section 113 applies to "places of assembly"; that is, to those places in which "provision is made for the seating of one hundred or more persons, for religious, recreational, educational, political, social, or amusement purposes or for the consumption of food or drink". In other words, said section refers to churches, schools, theaters, night clubs, restaurants, etc., and it does not apply to a law office. The reason for this section is clear; its purpose is to facilitate the rapid exit of a great number of persons in cases of fire or other emergency. For this reason these exits mentioned in this section "shall be not less in width than the full width of the aisle". This is not our case either. The door of Mr. Licari's office is 36 inches wide; the corridor is 13 and a half feet wide at that place.

Defendant cites section 125 of the Building Regulation. This section appears under a subdivision of the Regulation entitled "Other Exit Facilities Requirements". Insofar as pertinent this section provides:

> "Doorways opening onto a street, or to a court or open space connecting with a street, and serving as a required exit *for more than 50 persons* shall have the doors so hung as to swing open in the direction of exit travel; but this requirement shall not be construed to prohibit the use of sliding doors in stables, garages, and shipping and receiving rooms of business buildings and storage buildings.
>
> "All exit doors in rooms occupied *by 50 or more persons* and all exit doors in exits *from places of assembly* shall be so hung as to swing open in the

direction of exit travel". (Italics supplied.) *23 R. & R. P.R., section 43-882.*

It may be seen that the above-copied provisions apply to (1) spaces "serving as a required exit for more than 40 persons," (2) "rooms occupied by 40 or more persons", and (3) to exit doors from "places of assembly," that is, places in which provision is made for seating 100 or more persons. Neither is section 125 applicable to a law office.

Defendant also alleges that the door in question must open outward because it is so required by specific sections which it cites from "Rules and Regulations on Fire Prevention" of the Puerto Rico Fire Service. These regulations were in force when the drawings of the building were approved. They were approved in 1946 and from an examination of its text it seems that they may be considered as the forerunner of the existing Building Regulations. The sections cited by the defendant from these regulations are section 11(a) of Title I and section II(d) of Title II, the text of which was published by the former Insular Fire Service of Puerto Rico, without date, but which was allegedly approved by the Governor on May 10, 1946 (Defendant's Exhibit B.)[1]

The reference made by defendant to section11(a) of Title I of those Regulations must be an error because that subdivision merely provides that no inflammable liquid will be allowed in a theater. We suppose that defendant meant section I of Title I which provides for exit doors. Let us examine those two provisions of the Rules and Regulations of the Fire Service.

Title I refers to theaters and has no application whatsoever to professional offices. For that reason section VI of that Title and which refers to exit doors of theaters sheds no light on this case. Other sections of said Title I (thea-

[1] The existing regulations of the Puerto Rico Fire Service appear in 25 R. & R. P.R., sections 314-1 *et seq.*

ters) refer to seats or chairs, projection rooms, stage, dressing rooms, etc.

Another section of these Regulations of the Fire Service cited by the defendant, section II(d) of Title II, is not applicable to cases like the present one either. The aforesaid Title II deals with "Places of Assembly," defined under its section I as follows:

> "'Places of assembly' include all buildings or parts of buildings used for the assembly of persons *for entertainment or amusement*, including all places where persons congregate *such as dance halls, bars, cabarets, night clubs, restaurants, hotels, etc.*"[2] (Italics supplied.)

Section II(d) of said Title II (Places of Assembly) provides for "exit doors". The aforesaid section defines the term "exit doorway" and to that effect it says that it means "the door or any other opening through which persons may pass safely *from the place of assembly* to a street or to an open space which provides safe access to a street". (Italics supplied.) Section I(b).[3] Said section II(d) provides:

> "All exit doors in rooms occupied by 50 or more persons and all exit doors in exit ways from places of assembly shall be hung to swing in the direction of exit travel, but this requirement shall not be construed to prohibit doors swinging both inwards and outwards".[4]

The aforesaid provisions of the Rules and Regulations of the Fire Service refer to theaters and to "places of

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[2] The provision in force is essentially the same. *See 25 R. & R. P.R., section 314-21.*

[3] The provision in force is identical. *See 25 R. & R. P.R., section 314-21(b)*

[4] The provision in force is identical. *See 25 R. & R. P.R., section 314-22(d).*

assembly" and they are not applicable to professional offices.

We find no merit in the allegation that the "National Building Code" required the defendant to hang the door opening outward. Said code ("National Building Code") is neither a law nor an official government regulation; it is a manual or a draft for a building code proposed by a corporation board for fire insurance suits, which is a private entity and which is called "National Board of Fire Underwriters". No matter the weight of respect that this draft for a building code may carry, it does not have the force of law. Furthermore, the pertinent part of said "code" which was read by the defendant's expert at the trial, refers to exit doors for more than 40 persons. It is clear that the requirement that the doors should swing outward applies to places of assembly, that is, rooms where a large group of persons assembles, such as dance halls, restaurants, night clubs, etc., and not for offices of professional people, such as in the case at bar.

Another argument presented by the defendant is that the Bureau of Permits approved the drawings of the building and that said drawings show the doors of the first floor opening to the hall. As we have pointed out previously, defendant's expert, Hector Deliz, was a permit officer when the drawings were approved. He testified that there did not exist in Puerto Rico, at that time, a building code but there did exist a Fire Service Regulation which contains, he said, many rules taken from the "National Building Code." He laid special stress on "specifically that part known to everybody which says that in public places of assembly, theaters and rooms where persons assemble, the exit doorways shall open in an outward direction . . . may not be obstructed by metal bars, irons or any object preventing the free opening of the door in an outward direction." In the light of that explanation, it is significant to

point out that the Fire Service Regulations in referring to exit doors from *theaters* provides that "No doorway (window or any other opening) on any floor to be used by the public may be obstructed by metal bars, chains, iron grates, or screens". To better explain what he had in mind, the expert immediately gave the theater as an example.

Since there did not exist any regulation to the effect that a door of an attorney's office should open outward, the Bureau of Permits did not require, nor could it require it; since there was no regulation prohibiting it, it could not nor did it prohibit it. For that reason, since the drawings comply (presumably) with the statutory requirements existing at the time they were approved, it was incumbent on the Bureau of Permits to approve them as it did. The approval by the Bureau of Permits means that the drawings approved comply with the minimum requirements of the law (and the regulation made under the authority of law), but in no way may such an approval absolve defendant from civil liability. *Girard v. Fine*, 85 N.Y.S. 2d 418, 419 (1948). In this case, also dealing with a door, it was said that the fact compliance was had with the requirements of the building code and that a building permit was obtained, did not relieve the defendant from his duty to furnish a safe method of ingress and egress.

We have now come to the final part of the analysis of this matter. Did the defendants (the landlord and the tenant) incur liability under Section 1802 of our Civil Code, or should the injury caused to plaintiff without any fault on her part and while she was in the exercise of a lawful act, be left unrepaired?

A door is not an intrinsically dangerous object per se. The courts have generally refused to grant compensation for damages suffered by persons when the door is well constructed and functioning properly and when the injured

party suffers damages upon using the door, that is, while entering or leaving the premises. In such cases the visitor is required the proper care in passing through a door and in operating the same. *16 A.L.R. 2d 1166.* Nor is the owner of a building liable when a third person has carelessly released a swinging door and caused injury to the person coming behind him. Those doors, it has been said, are of common use in commercial premises and it is to be expected that persons using them exercise the necessary care. *Ibid 1176.*

However, the rule varies in the case of doors which open into halls or corridors and stairways and the injured party is neither entering nor leaving by the door but is walking through the hall or stairway at the moment he is struck by the door. In those cases the authorities maintain that it is up to the judge to evaluate the facts and to determine whether a door thus constructed is dangerous per se and whether the owner of the building is liable or not for the damages it may cause. *Ford* v. *John Wanamaker*, 150 N.Y.S. 795 (1914); *Campbell* v. *Hughes Provision Co.*, 90 N.E. 2d 694 (1950); *Paine* v. *Armour & Co.*, 80 N.E. 500 (1907); *McDermott* v. *Sallaway*, 85 N.E. 422 (1908); *Buscemi* v. *Chefford*, 8 N.Y.S. 2d 578 (1938); *President & Directors of Georgetown College* v. *Hughes*, 130 F.2d 810 (1942); *Zeder* v. *Church*, 88 N.Y.S. 2d 617 (1949); *Morelock* v. *De Graw*, 112 S.W. 2d 126 (1937); 16 A.L.R. 1171-1172. In those cases the rule varies because the situation is different. The person to be injured is walking with the necessary care when he is struck by an object which suddenly and without notice gets in his way, something which he cannot anticipate. Under these circumstances, to have a door, which upon being used normally, functions in such a manner as to injure the persons who are walking with ordinary care along a hall or a stairway, constitutes lack of the care due the public and it entails liability. *President & Direc-*

tors of Georgetown College v. *Hughes, supra; Morelock* v. *De Graw, supra;* 16 A.L.R. 2d 1171.

The cases of *Goose* v. *Hilton*, 79 P.R.R. 494 (1956) and *Munoz* v. *R. Fabian & Co.*, 71 P.R.R. 454 (1950) cited by the defendant in its brief are not applicable because they deal with situations different from that under consideration. It is true that in *Goose* v. *Hilton* it was said that "There is no obligation to protect the visitors against dangers *which are known to him, or which are so apparent that he may reasonably be expected to discover them*", but there the object was a stairway. The existence of a stairway on which a person must tread is apparent and obvious and it is to be presumed that a person shall exercise prudence and care in going up or down the stairs. It was also said in the case of *Goose* v. *Hilton* that a visitor is entitled "to assume that proper care has been exercised to make the premises safe for him, and he is not required. . . . to be on the alert for possible defects". This case falls within the second alternative; the plaintiff in walking along the hall although bound to notice the stairways or other apparent dangers that might have existed in the hall, was not bound to expect and anticipate that an object arising from the floor, or falling from the ceiling or the walls, might suddenly strike her. The other case cited, *Munoz* v. *R. Fabian, supra,* dealt with the existence of a step in the middle of a passageway and it was therefore concluded that the person walking through the aisle had the obligation of noticing the step and exercising due care. In these cases dealing with stairways, except under special circumstances, the owner of the building is not liable because, as was previously said, they are apparent and obvious dangers and the persons who travel thereon must do so prudently.

Having considered the applicable law, we shall now turn to our case. This is a main corridor on the ground floor

of a twelve-story building, in which at the time of the accident there were 242 families which, in the opinion of the manager of the building, consisted of about 500 persons and in which floor and on both sides of the main corridor there were a number of business premises, nine of which were occupied at the time of the accident. Among the businesses established at that time there were a drugstore, a beauty parlor, and a restaurant.

Although it is to be supposed that not all of the permanent residents of the building used said corridor since those that arrived by automobile used the elevator or the rear entrance of the building, yet, a part of these residents might frequently use the corridor in order to go out to the street to take taxis, busses, etc. On the other hand, a great number of persons who work in the commercial premises of the first floor and many of their clients and visitors use said main corridor. Defendant's expert himself testified, on cross-examination, that at certain times a great number of persons coincide in the traffic along said corridor; about 50 persons, he said, and added that he had personally witnessed the crowds at those times.

The door which caused the accident, the one of Mr. Lieari's office, opened outwards because it was thus constructed and so keep by the owner and landlord without there being any official regulation requiring or prohibiting it. As we have seen, the mere construction or use permit did not render him immune from liability under Section 1802. A hall with access to such a large number of persons, through which from dozens of persons on the days of scarce movements to hundreds of persons on the days of much traffic travel and which has doors that might open outward without any notice and without any protection for persons passing thereby, and which open in that direction without any specific requirement of law or regulation, constitutes an undue risk for such visitors. A slight con-

sideration shows that there exists the probability, and not the mere possibility, that there must come a time when there shall coincide in the hall the edge of the door and the head of a human being. This risk constitutes the negligence that may cause injury to another which the wrongdoer has the obligation to remedy. We should bear in mind that the premises defined by official regulations as places of assembly must keep their doors opening outward. It may be argued that this may also constitute a risk for people passing by. Perhaps it is, but in those cases this argument is set off by the convenience of having those doors open easily and outwardly in order to prevent hundreds of persons from dying in cases of emergency. In cases of places of assembly the question frequently arises that there are several interests in conflict and that the legislature in following its public policy is compelled to choose that solution which is most convenient and most useful for the public in general. At times the solution which should be rationally adopted as the best for the community in general may turn out to be inconvenient or burdensome for some of its members, but this is a reasonable price to be paid for the enjoyment of a peaceful and civilized life. In the absence of such compromises human life would quite resemble the undesirable picture described by Thomas Hobbes, in which each human being would be in constant struggle with his neighbor and in which the life of man would be brief and brutal.[5]

We agree with the trial judge in that defendant San Juan Darlington, Inc. was liable, but not tenant Licari. The latter, at the time of the accident, was in the exercise of a lawful act, opening the door of his office, which act ordinarily does not imperil the security of third persons. As previously pointed out, the plaintiff was not inside Mr.

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[5] Leviathan (1651).

Licari's office nor was she entering or leaving the office. Nor did the tenant incur negligence in having drapes on the inside of his office for no one who rents a place with glass doors and glass walls is bound to live or work in a showcase.

The third and last error assigned by the defendant consists in alleging that the compensation is disproportionate and that the court erred in imposing on appellant the payment of attorney's fees. In cases for damages, the amount of compensation fixed rests with the sound discretion of the trial judge and it should not be disturbed unless it is manifestly erroneous or exaggerated. *The Conjugal Partnership, etc.* v. *Cruz*, 78 P.R.R. 335 (1955); *Dávila* v. *Land Authority*, 78 P.R.R. 817 (1955); *Bardt* v. *Baez*, 78 P.R.R. 115 (1955); *Prado* v. *Quiñones*, 78 P.R.R. 309 (1955); *Goose* v. *Hilton Hotels*, 79 P.R.R. 494 (1956). Since we believe that this aspect of the judgment of the trial court is not manifestly erroneous or exaggerated, we affirm the same. As to the imposition of attorney's fees, we believe that defendant is correct since in our opinion it does not constitute obstinacy to defend oneself from a complaint for $52,000 under the circumstances of this case in which to determine the applicable law could be object of honest discrepancy.

The foregoing disposes of plaintiff's appeal wherein she assigned as error the dismissal of the complaint as to defendant Licari.

The judgment appealed from rendered by the Superior Court, San Juan Part, on May 22, 1957, is hereby modified so as to eliminate the award of attorney's fees, and as thus modified, it is affirmed.

(s) Marco A. Rigau
Associate Justice

(Same Title)

JUDGMENT

Division composed by its President, Mr. Justice Blanco Lugo, and by Mr. Justice Rigau and Mr. Justice Davila

San Juan, Puerto Rico, November 22, 1961.

For the reasons set forth in the foregoing opinion the judgment appealed from, rendered by the Superior Court, San Juan Part, on May 22, 1957, in the above-captioned case, is hereby modified so as to delete the award of attorney's fees, and thus modified, it is affirmed.

It was so decreed and ordered by the Court as witnesses the signature of the Chief Justice.

(s) Luis Negron Fernandez
Chief Justice

I attest:

(s) Ignacio Rivera
Secretary

Appendix "B".

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

Civil Case No. CS-55-5624

DOLORES SANTAELLA NEGRON,
PLAINTIFF,

v.

PHILIP LICARI AND SAN JUAN DARLINGTON, INC.,
DEFENDANTS.

DAMAGES

OPINION AND JUDGMENT

This is an action for damages against Philip Licari and San Juan Darlington, Inc. for personal injuries. The defendants denied the negligence charged against them in the complaint and other essential facts. After a hearing on the merits, the court, based on the evidence which it believed and weighed, made the following

FINDINGS OF FACT

(1) The defendant San Juan Darlington, Inc. is a corporation organized in the State of South Carolina and it was authorized to do business in Puerto Rico on June 21, 1950. It is the owner of and operates a 12-story building known as San Juan Darlington, situated at Fernandez Juncos Avenue, Stop 11, Santurce. Its main floor is devoted to commercial activities and the other floors to the rental of residential apartments. The defendant Philip Licari practices law in Puerto Rico and at the time of the events which shall be hereinafter described he had his law office in the first floor of the San Juan Darlington building. He occupied said office as tenant, by virtue of a lease contract

executed on October 31, 1952 with codefendant San Juan Darlington, Inc.

(2) On July 22, 1955, at about 8:30 in the morning, the plaintiff Dolores Santaella Negron and her sister Angelita Santaella Negron, visited the beauty parlor of Maria Roger, located on the main floor of the San Juan Darlington building, in order to have her hair fixed. For three years she had been visiting that beauty parlor situated in said building, three or four times a year. In order to reach the beauty parlor from the front entrance of the building and go out to the street again, it was necessary to walk all along a main corridor which shall be described hereinafter. The plaintiff and her sister left the beauty parlor shortly before 11:00 o'clock A.M. of July 22, 1955, and they walked along said corridor towards the street on the right hand side thereof, although not very close to the wall. The plaintiff walked on the right-hand side and Angelita on her left. The latter advanced one or two steps in order to call a taxi which was at the main entrance of the building and at that moment a glass door with a wooden frame suddenly opened hitting the plaintiff with the edge of the door on her arm and thigh, throwing her to the pavement. This door corresponded to the office which at that time and in that part of the building was occupied by codefendant Licari, as a tenant. The defendant Licari was the person who opened the door and when he saw the plaintiff on the floor, he immediately went to her aid. He tried to lift her and said, "Oh, she cannot get up!" He then went to fetch a small seat and with the help of two other persons carried plaintiff to his office. There he gave her some water, she was shaking, very nervous and in a frenzy, she could not walk. Then Mr. Licari and other persons took plaintiff to a taxi which was standing at the door and which drove her to her home.

(3) Upon reaching her home they carried plaintiff into

the house between the chauffeur of the taxi and two men that were there. They seated her in an armchair and her sister gave her water and aspirins to calm her down. At that moment her forehead was swollen and her left eye was black. Her right arm from the shoulder and part of her right thigh were also getting black, as well as her left hip. The plaintiff moaned and cried with pain and they called Dr. Carrion. Dr. Carrion, with three or four other persons, carried her from the armchair to her bed. The doctor suggested that a specialist be called and on the following morning Dr. Espinosa, a bone specialist, examined her. He recommended that X-Ray pictures be taken, which was done at her own house. After examining them Dr. Espinosa considered the case as a serious one and recommended a full examination of the plaintiff and surgery. Plaintiff was hospitalized in the Auxilio Mutuo on July 24, 1955 and operated on the 25th. On August 9 she returned to her home in an ambulance and was confined in a special fracture bed, without mobilization for more than two months with her foot in a cast. On October 19, 1955, Dr. Espinosa ordered that she be taken out of bed because pneumonia had set in. With the help of several men she was placed in a wheel chair where she stayed 25 or 30 minutes every day. At that stage the insertion of a catheter was necessary in order to eliminate properly. At the time of the trial, November 8, 1956, plaintiff had been able to sit in a wheel chair only. She could not walk even with crutches. Her knees were stiff and after treatment of physiotherapy received in her home for more than 10 months, everything had still to be done to her, even her physiological necessities. She does not sleep well, eats very little and she must be given drugs. Before the all plaintiff enjoyed good health, walked without the aid of anyone, and had not been hospitalized. At the time of the accident she was 74 years of age and weighed 140 pounds.

(4). The medical examination made by Dr. Espinosa on the day following the fall revealed the existence of trauma in both shoulders and arms and trauma with fracture in the left hip. The trauma on the right side was an ecchymosis in the lateral part of the right arm from the shoulder to the arm. There was an ecchymosis on the left shoulder which also extended to the arm. There was an extravasation of the blood in the conjunctive of the left eye and there was a dislocation of the hip which required an operation. In the operation the hip was opened to reduce the fracture with internal fixation by a nail. The subcapital fracture was immediately under the head of the femur with dislocation of the bone. After the operation a cast was placed from the ankle covering the foot in order to prevent any outward movement of the leg. When she left the Auxilio Mutuo, plaintiff remained in her home in a hospital bed until she was able to sit in a wheel chair. According to the last X-Ray which was made about two weeks before the trial, the doctor authorized the plaintiff to stand on her feet but holding for support on two bars which were constructed for that purpose. The last medical examination of the patient revealed: (1) disuse atrophy of the limb due to the fracture; (2) weakness of the limb caused by disuse; (3) inflammation of the left knee with considerable limitation of the movement of the knee, a limitation of 65 flexion, the normal being 90 ; (4) certain secondary limitation in the movement of the other leg, the right leg. This condition affects the patient psychologically and morally due to her inability and incapacity to attend herself as well as the physiological functions in general. The more recent X-Rays show that the fracture has healed.

Dr. Espinosa testified on the witness-stand that at that time the prognostic was of a reserved nature, that is, the plaintiff's condition could develop eventually satisfactorily, that the inflammation of her left knee could give her much

trouble perhaps indefinitely; or also that necrosis of the head of the bone could follow, that is, could die and become deformed. This would cause great pain when standing and it would affect the circulatory system making it necessary perhaps to remove, by surgery, the head of the bone. In a person of 74 years of age, a fall which causes a fracture such as the one described herein need not perforce be violent.

(5) At the time of the accident Maria Roger's beauty parlor occupied the sixth room in the corridor of the San Juan Darlington building, on the left-hand side entering the building. In the first place there was a grocery, then Mr. Licari's office, then Dr. Villafane's office, two unoccupied rooms and the beauty parlor. On the opposite side of the corridor in the same order there was a drugstore; an office; Long's offices and a cafeteria. There are times when there is much traffic of persons in the corridor and other times when the traffic is scarce and in general the movement is moderate. The corridor was usable from wall to wall and all the walls dividing the establishments from the corridor as well as the doors were of transparent glass.

The door of Mr. Licari's office which he opened was 36 to 40 inches wide; it was of glass with a wooden frame and it only had one leaf. According to the testimony of the plaintiff and her sister the door looked like a wall. The door as well as the wall of Mr. Licari's office which faced the corridor had a dark-colored drape behind the glass up to a height of six feet. Plaintiff and her sister had no knowledge and were not aware of the manner in which these doors moved or were opened. They made appointments with Maria Roger before visiting her beauty parlor, and Maria Roger used to wait for them at the door. As a matter of fact, on the day of the accident she waited for the plaintiff and her sister at the door of her beauty parlor with it opened. At the place where the accident took place,

there was no poster, sign, notice, or any object; it was a clean and pretty place and it was lighted.

Mr. Licari's office was at a distance of 47 feet from the entrance of the building along the main corridor and the beauty parlor of Maria Roger was 84 feet beyond Mr. Licari's office. The width of the corridor at the time of the accident was 13 1 2 feet. It was lighted by electricity during the whole day. The walls all along the corridor from the entrance of the building to the beauty parlor do not follow a straight line, but there are two turns making the line irregular. The door of Mr. Licari's office had a hydraulic device which controls its movements and causes it to close automatically. To open it, it must be pushed with the hand. On said door Mr. Licari had a sign which reads in English: "Law Office, Philip Licari", in gold letters, about 4 to 5 inches high. On the lock there was a shiny metal plate. The premises were leased to Mr. Licari without drapes which he put himself behind the wall and the glass door. Besides the aforesaid corridor the building had other entrances, on the rear and through the basement. This entrance was used by the regular tenants of the residential premises who used automobiles. At the time of the accident the building was occupied by 312 families which made a total of about 500 persons.

At that time there was no sign or notice as to how the doors opened nor any object or obstacle which prevented the persons from using the corridor along the entire width from wall to wall. At the time that the plaintiff and her sister walked along said corridor there was normally little traffic of persons thereon.

(7) The drawings of the San Juan Darlington building were made pursuant to the U. S. Housing Authority Regulations and the Requirements of the National Building Code. Said drawings provided that all the doors of the premises in the commercial section of the building where

Mr. Licari was located should open outward; inside the corridor. The Planning Board and the Permit Bureau of Puerto Rico approved said drawings as aforesaid and they were likewise approved by the Insular Fire Service which had to recommend its approval from the point of view of security against fires, before the permit of use be issued. In August 1950, date when the drawings were submitted, there was no building code in Puerto Rico, but the local agencies followed the provisions of the National Code.

(8) As a result of the injuries suffered, plaintiff incurred the following medical and hospitalization expenses: Auxilio Mutuo, $368.51; Ehret, Ambulance Service, $37.50; medicines, Hato Rey Drugstore, $37.05; special fracture bed, $30.00; wheel chair, $150.00; crutches and other utensils, $14.00; X-Ray service at the house, $120.00; special nurse service at the Auxilio Mutuo and at the house, $885.00; physiotherapy treatment at the house, $156.00; Dr. A. L. Mejías, $15.00; Dr. Carmen C. Perez, anesthesist, $40.00; Arreche Laboratories (blood transfusion), $98.00; and Dr. Espinosa, $500.00. The preceding items amount to $2,451.06.

(9) The Court reproduces the certificate of inspection contained in this record as an integral part of these findings of fact.

Conclusions of Law

Section 1802 of the Civil Code provides that any person who by action or omission causes damage to another, through his fault or negligence, must repair the damage so done. We shall first consider whether or not codefendant San Juan Darlington, Inc. was negligent in this case.

We have already determined that plaintiff's fall while she walked through the corridor of the San Juan Darlington building was due to the impact against her body of a door of an office facing said corridor, which upon being

opened invaded said area. The evidence discards any belief that the plaintiff fell by herself. The ecchymosis on her right side shows otherwise.

The defense of the San Juan Darlington is in the sense that in order to comply with the existing regulations it had to construct the doors of those premises on the ground floor of the building opening into the corridor because it was a commercial section and a place of public assembly and also for security purposes. In the light of the evidence on this point, it is not necessary for us to discuss whether upon erecting the building defendant was bound, as a question of law, to operate the doors in that fashion; or whether or not there existed in Puerto Rico legislation or regulation imposing such a duty. We accept, for present purposes, that the defendant was bound to operate the doors as stated in the drawings. But the fact that the defendant had to construct the doors facing the corridor in that manner is not incompatible with any duty on its part to prevent its functioning from causing any damage.

According to the aforesaid section 1802, any person who by his act or omission causes damage through negligence, is bound to repair it. Negligence, in its general meaning, is lack of care. In its legal sense is the violation of the duty to use care towards another. The failure to exercise the degree of care demanded by the circumstances, or such care as a prudent person would use under the circumstances, or the failure of one owing a duty to another to do what a reasonable and prudent person would normally have done under certain circumstances, or doing what a reasonable and prudent person would not have done, and which omission or commission is the proximate cause of injury to the other. It is the failure to comply with the duty that every person has to protect another against injury, as a result of which the latter sustains damages. Of course, an essential fact to render a person liable for negli-

gence for an injury suffered by another is that he must have knowledge, or that said knowledge may be reasonably imputed to him, that the act or omission involves danger to another. The degree of care that should be observed in the discharge of the duty to exercise care is the ordinary and reasonable care. Hence, negligence is defined as the failure to exercise the degree of care demanded by the circumstances in each particular case. See: 38 *Am. Jur.* pp. 642 *et seq.*; Restatement, *Negligence;* cf. *Parker* v. *Denver* (Colo.), 262 P.2d 553, 37 ALR 2d 1177; *Haight* v. *Nelson* (Neb.), 59 N.W. 2d 576, 42 ALR 2d 1. The risk reasonably to be perceived defines the duty to be obeyed; it is the risk within the range of apprehension of injury to another person. *Scarborough* v. *Aeroservice, Inc.*, 53 N.W.2d 902, 30 ALR 2d 1159. As was said in *Haight* v. *Nelson, supra*, foresight, not retrospect, is the standard of diligence; negligence is not a matter to be judged after the occurrence. The principle governing negligence is based on the exercise of reasonable care under all the circumstances. *Cote* v. *Litawa* (N.H.), 71 A.2d 792, 18 ALR 2d 216. As to the duty to exercise reasonable care towards invitees to places of business, see: *Young* v. *Bank of America, etc.*, 95 Cal. App. 2d 725, 214 P.2d 106; *Zaia* v. *"Italia" Societa*, 11 ALR 2d 1071 (Mass.), 87 N.E.2d 183; *Lonnecker* v. *Boris* (Mo.), 229 S.W.2d 524; *Nichols* v. *Consolidated Dairies, etc.* (Mont.), 239 P.2d 740, 28 ALR 2d 1216; *Goldin* v. *Lipkind*, 27 ALR 816 (Fla.), 49 So.2d 539; *Douglass* v. *Douglass*, 46 ALR 2d 1370 (Cal.), 279 P.2d 556; *Strand Enterprises Inc.* v. *Turner* (Miss.), 78 So.2d 769; cf. 28 *Cal. Jur.*, Innkeepers.

In the light of the general principles set forth, it is obvious, according to the evidence, that the accident that took place and the existing risk could be clearly foreseen. That when the door of the premises adjacent to the corridor in the building was opened, it could cause an impact to any person passing by said corridor, in the absence of some-

thing that might prevent said person from walking or placing himself within the radius of action of the door and in the absence of any notice or sign of precaution, was a fact that could be foreseen by a prudent and reasonable person. Said risk was a *probability* and, therefore, should have been foreseen. *Figueroa* v. *P. R. Ry. Light*, 66 P.R.R. 463; *Rivera* v. *People*, 76 P.R.R. 378.

The probability of the risk was still greater if one bears in mind that the door as well as the wall were both of glass, so that at first sight and to a mere passer-by, at a fair distance, the door in itself was not clearly identifiable. If in addition to this the defendant permitted and tolerated, as it did, that dark-colored drapes be hung on the interior part of the glass wall and door, both things were still less distinguishable from each other. Plaintiff herself, who according to the evidence was not acquainted with the movement of said doors, which was totally unknown to her, testified that to her it all seemed like a wall. According to the weighing of the evidence made by the trial court in the course of the inspection it made, the exact localization of the door cannot be fixed with precision in the premises taken as a whole, precisely and although it might seem paradoxical, because of the light and transparence that the glass wall permits in the interior of the room.

The defendant San Juan Darlington, Inc. had the duty to protect the plaintiff, as invitee, against risks and injuries to her person. Although under the applicable doctrine the defendant is not an absolute insurer of the safety of the invitee, it was always bound to exercise towards the latter such a degree of foresight, reasonable care and diligence as to avoid risks which could be clearly anticipated and easily apprehended by a prudent person. *Goose* v. *Hilton, etc.*, 79 P.R.R. 494; *Prado* v. *Quinones*, 78 P.R.R. 309; *Rivera* v. *Escámbron Development Co.*, 73 P.R.R. 477; *Ramirez* v. *Hotel Condado*, 68 P.R.R. 880. Cases such as

Conde v. New York Dept. Store, 71 P.R.R. 175 and *Munoz v. Fabian*, 71 P.R.R. 454, do not seem to us applicable herein. Those cases dealt with a fixed or stable condition (steps) which were visible and known to the persons who were injured therein, under conditions not showing any other hazardous risks except the step itself. Here we have a movable object of a changeable condition such as the opening and closing of the door. A passer-by could not predict the exact moment when a door would leave its stable position to assume another which would invade his path or direction.

The duty of the defendant to exercise reasonable care and foresight in order to avert injury to a third person in the operation and functioning of the doors of those premises which open into the corridor of the building was not incompatible with, nor was he prevented by, the duty that he might have had of constructing said doors opening outward. On the other hand, under the circumstances revealed by the evidence herein, plaintiff cannot be charged with contributory negligence or the assumption of a risk in walking along the place she did, in the absence of any article, object, or notice which might warn that she should not walk along that place.

The court concludes that the defendant San Juan Darlington was negligent and that its negligence was the proximate cause of the damage and it is, therefore, liable under Section 1802 to plaintiff.

As to codefendant Mr. Licari, the evidence does not establish any liability on his part. As a tenant he was in possession and control of said premises and he was entitled to make use of the door which caused the injury. The evidence does not convince us that he used the door in any other manner than what was normal and ordinary. The whole evidence shows that on that day the mechanism which controls the movement of the door was operating

and this being so, it was not possible to open the door with a single push. It was necessary to push it, although by applying a certain degree of initial force to overcome the resistance of the mechanism. Mr. Licari is not liable in this action.

Considering all the elements of damages, the court concludes that the plaintiff is entitled to a reasonable compensation for the personal injuries suffered, her physical, mental and moral sufferings, and the disability suffered in her left leg, for the amount of $12,000. She is equally entitled to be compensated for the medical and hospitalization expenses and disbursements as a consequence of the injuries received, amounting to $2,451.06.

JUDGMENT

By virtue of the findings of fact and conclusions of law previously stated, judgment is rendered ordering the defendant San Juan Darlington, Inc. to pay to the plaintiff as damages for the accident in question, the amount of $12,000 plus $2,451.06 for medical and hospitalization expenses. Costs are imposed on the defendant including the amount of $500 for attorney's fees.

The complaint is dismissed as to defendant Philip Licari, with costs, without including attorney's fees.

LET IT BE RECORDED AND NOTIFIED.

San Juan, Puerto Rico, May 22, 1957.

(s) CARLOS SANTANA BECERRA
Judge, Superior Court

I CERTIFY:

(s) LILI GONZALEZ
Clerk

(Same Title)

CERTIFICATE OF INSPECTION

On December 3, 1956, on or about 5 o'clock in the afternoon, the Court went to the San Juan Darlington Building situated at Fernandez Juncos Avenue. Together with the defendants and their counsel and attorneys for plaintiff, it inspected that part of the building involved herein. It observed the office occupied by defendant Mr. Licari at the time of the accident. The entire wall dividing this office from the corridor of the building, as well as all the walls on either side of the corridor are glass partitions. At the time of the inspection there were no drapes behind the glass wall corresponding to Mr. Licari's office. The door giving access from this office to the corridor of the building is entirely of glass except for its frame which is made of mahogany, and the inferior part of which is somewhat wider, about 10 inches, without it being measured, and narrow on the sides and superior part thereof. This door is about 36 inches wide, it opens outward, that is, into the corridor, swerving towards the left in the direction it opens. At the time of the insepection it had a mechanical device which caused it to close automatically. In order to open the door, which the court did, it is necessary to push it with the hands using some force because of the mechanical device. It swerves on its hinges up to 150 degrees. It is not possible to open the door its full width, not even to 90 degrees, with a single push, because of the mechanical device already mentioned.

Besides the office occupied by Mr. Licari which gives access to the corridor in the first floor, there are other premises devoted to the commerce and offices that also open into said corridor. After passing Mr. Licari's office, entering the building, there is a cafeteria which also has access to this main corridor. Right across the door of Mr. Licari's office is the business in front of his office. All the doors of the establishments that communicate with the corridor

open into it. Mr. Licari's office has an addition to the door which opens into the corridor, another rear door which connects with a terrace or court which also has access to the outside of the building. Said terrace or court is built on the side of the building. This door also opens outwards, that is, towards said court or terrace.

The basement is used for the parking of cars and has access to the building through the stairway and elevators. The measurements and other details of the place inspected are revealed by the oral evidence presented in court and by the drawings of the building introduced in evidence. The main corridor of the building to which Mr. Licari's office and other commercial establishments have access, has no doors to its street entrance.

At the time of the inspection the court did not see any notice, sign or poster on the doors, or nearby or in any other place, showing the direction in which the doors giving access to the corridor open. Nor did it observe any construction, furniture or object that might prevent access of the persons walking through the corridor to the area occupied by the doors when the same were opened, or any indication on the floor, whether by a printed or painted sign, that might indicate such area of movement of the door and its direction.

Let it be notified to the parties with a copy of this certificate, who shall have until May 17, 1957, to submit any objection or changes thereto, and upon failure to do so, it shall be understood that they have accepted the same.

San Juan, Puerto Rico, May 13, 1957.

(s) CARLOS SANTANA BECERRA
Superior Court Judge

Served:
Messrs. B. Sanchez Castano & Rivero Cervera
Mr. Philip Licari
Mr. A. Viera Martinez
May 13, 1957. (s) VICENTE AVILES

Appendix "C"

IN THE SUPREME COURT OF PUERTO RICO

No. 12,367
Damages

DOLORES SANTAELLA NEGRON,
PLAINTIFF AND APPELLEE,

v.

PHILIP LICARI AND SAN JUAN DARLINGTON, INC.,
DEFENDANTS, THE LATTER APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF PUERTO RICO,
SAN JUAN PART.

CLERK'S CERTIFICATE

I, Ignacio Rivera, Secretary of the Supreme Court of Puerto Rico, Do Hereby Certify:

That in the brief filed by San Juan Darlington, Inc. on May 7, 1958, in the above captioned case, the record of which is under my custody in this office, it was raised as *the second assignment* of error that "The trial court erred in sentencing the landlord San Juan Darlington, Inc. without evidence, denying its equal protection of the law and illegally depriving it of its property; and also erred in making subjective findings, thus depriving this appellant of its right to cross-examine and of the due process of law.

IN WITNESS WHEREOF, I issue these presents, in San Juan, Puerto Rico, this 14th day of February, 1962.

IGNACIO RIVERA
Secretary
Supreme Court of Puerto Rico

[SEAL]